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RECENT DECISIONS

BILLS AND NOTES—RENEWAL NOTE—FAILURE OF CONSIDERATION—ESTOPPEL.—The defendants executed to the plaintiff's intestate a series of promissory notes to cover a part of the contract price for the erection of cerain buildings that developed defects showing faulty workmanship and poor material. Afterwards, and with knowledge of these defects, the defendants executed a note to the plaintiff's intestate in renewal of one of the former series. When sued on this renewal note, the defendants attempted to set up the defense of failure of the consideration for the original note. *Held,* the plaintiffs can recover. *Stewart* v. *Simon, et al.* (Ark.), 163 S. W. 1135.

It was held in an early case that one who executes a renewal note with knowledge of a failure of consideration in the original, might set up the defense available for the original in an action on the renewal note. *Commonwealth Insurance Co. v. Whitney,* Metc. (Mass.) 21. But by the weight of modern authority, the execution of a renewal note with knowledge of a failure of consideration in the original will operate as a waiver or estoppel to the setting up that defense in an action on the renewal note. *Keyes* v. *Mann,* 63 Iowa 560, 19 N. W. 666; *Keckley* v. *Union Bank,* 79 Va. 458; *Montfort* v. *Americus Guano Co.,* 108 Ga. 12, 33 S. E. 636. *Contra, Wheelock* v. *Berkley,* 138 Ill. 153, 27 N. E. 942. The holding of the principal case would therefore seem correct. But where the renewal, although made with knowledge of the failure of consideration for the original note, was made on the faith of plaintiff's promise to remedy such failure of consideration, the defendant maker is not estopped from setting up the defense of failure of the consideration for the original in an action on the renewal note. *McDaniel* v. *Mallary Bros.*, 6 Ga. App. 848, 66 S. E. 146.

CONTRACTS—RESTRAINT OF TRADE—PARTNERSHIP—BREACH BY ONE PARTNER.—A partnership, in selling its business, contracted that it would not engage directly or indirectly in a competitive business. One member of the firm opened a competing business. *Held,* there is no breach of the contract. *Rapalee* v. *John Malmquist & Son* (Iowa), 145 N. W. 279.

By the weight of authority, a partnership covenant not to engage in a business competitive to the one sold the buyer, is broken by an act of a partner in engaging in such business. *Love* v. *Stidham,* 18 App. D. C. 306, 53 L. R. A. 379; *Boutelle* v. *Smith,* 116 Mass. 111; *Raymond* v. *Yarrington,* 96 Tex. 443, 73 S. W. 800, 62 L. R. A. 962. But it has been held that only an act of the partnership in so doing, can amount to a breach of the covenant. *Steichen* v. *Fehleisen,* 112 Iowa 612, 84 N. W. 715, 51 L. R. A. 412. This view is accepted by the principal case. Such a technical construction would deprive the promisee of any substantial protection, since the partnership ceased to exist on the sale of the business. *Love* v. *Stidham, supra.* The rule that contracts in restraint of